

**ASSEMBLY BILL**

**No. 2678**

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**Introduced by Assembly Member Torrico**

February 19, 2010

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An act to amend Section 2924g, of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2678, as introduced, Torrico. Mortgages: Notice of sale.

Existing law requires that before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration, notice of the sale must be given, published, and posted in a specified manner at least 20 days before the date of sale, as specified. Existing law also requires the mortgagee, trustee, or other person authorized to record the notice of default or the notice of sale to send to each mortgagee or trustee a copy of the notice of sale at least 20 days before the date of sale. Existing law provides that there may be a postponement or postponements of the sale proceedings, under specified circumstances.

This bill would provide that if there is a postponement, or if there are postponements, of the sale proceedings, the borrower shall receive a new notification before the date of the actual sale.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2924g of the Civil Code is amended to  
2     read:

1 2924g. (a) All sales of property under the power of sale  
2 contained in any deed of trust or mortgage shall be held in the  
3 county where the property or some part thereof is situated, and  
4 shall be made at auction, to the highest bidder, between the hours  
5 of 9 a.m. and 5 p.m. on any business day, Monday through Friday.

6 The sale shall commence at the time and location specified in  
7 the notice of sale. Any postponement shall be announced at the  
8 time and location specified in the notice of sale for commencement  
9 of the sale or pursuant to paragraph (1) of subdivision (c).

10 If the sale of more than one parcel of real property has been  
11 scheduled for the same time and location by the same trustee, (1)  
12 any postponement of any of the sales shall be announced at the  
13 time published in the notice of sale, (2) the first sale shall  
14 commence at the time published in the notice of sale or  
15 immediately after the announcement of any postponement, and  
16 (3) each subsequent sale shall take place as soon as possible after  
17 the preceding sale has been completed.

18 (b) When the property consists of several known lots or parcels,  
19 they shall be sold separately unless the deed of trust or mortgage  
20 provides otherwise. When a portion of the property is claimed by  
21 a third person, who requires it to be sold separately, the portion  
22 subject to the claim may be thus sold. The trustor, if present at the  
23 sale, may also, unless the deed of trust or mortgage otherwise  
24 provides, direct the order in which property shall be sold, when  
25 the property consists of several known lots or parcels which may  
26 be sold to advantage separately, and the trustee shall follow that  
27 direction. After sufficient property has been sold to satisfy the  
28 indebtedness, no more can be sold.

29 If the property under power of sale is in two or more counties,  
30 the public auction sale of all of the property under the power of  
31 sale may take place in any one of the counties where the property  
32 or a portion thereof is located.

33 (c) (1) There may be a postponement or postponements of the  
34 sale proceedings, including a postponement upon instruction by  
35 the beneficiary to the trustee that the sale proceedings be  
36 postponed, at any time prior to the completion of the sale for any  
37 period of time not to exceed a total of 365 days from the date set  
38 forth in the notice of sale. The trustee shall postpone the sale in  
39 accordance with any of the following:

40 (A) Upon the order of any court of competent jurisdiction.

1 (B) If stayed by operation of law.

2 (C) By mutual agreement, whether oral or in writing, of any  
3 trustor and any beneficiary or any mortgagor and any mortgagee.

4 (D) At the discretion of the trustee.

5 *(2) If there is a postponement, or if there are postponements,*  
6 *of the sale proceedings, as described in paragraph (1), the*  
7 *borrower shall receive a new notification, as provided in Section*  
8 *2924b, before the date of the actual sale.*

9 ~~(2)~~

10 (3) In the event that the sale proceedings are postponed for a  
11 period or periods totaling more than 365 days, the scheduling of  
12 any further sale proceedings shall be preceded by giving a new  
13 notice of sale in the manner prescribed in Section 2924f. New fees  
14 incurred for the new notice of sale shall not exceed the amounts  
15 specified in Sections 2924c and 2924d, and shall not exceed  
16 reasonable costs that are necessary to comply with this paragraph.

17 (d) The notice of each postponement and the reason therefor  
18 shall be given by public declaration by the trustee at the time and  
19 place last appointed for sale. A public declaration of postponement  
20 shall also set forth the new date, time, and place of sale and the  
21 place of sale shall be the same place as originally fixed by the  
22 trustee for the sale. No other notice of postponement need be given.  
23 However, the sale shall be conducted no sooner than on the seventh  
24 day after the earlier of (1) dismissal of the action or (2) expiration  
25 or termination of the injunction, restraining order, or stay that  
26 required postponement of the sale, whether by entry of an order  
27 by a court of competent jurisdiction, operation of law, or otherwise,  
28 unless the injunction, restraining order, or subsequent order  
29 expressly directs the conduct of the sale within that seven-day  
30 period. For purposes of this subdivision, the seven-day period shall  
31 not include the day on which the action is dismissed, or the day  
32 on which the injunction, restraining order, or stay expires or is  
33 terminated. If the sale had been scheduled to occur, but this  
34 subdivision precludes its conduct during that seven-day period, a  
35 new notice of postponement shall be given if the sale had been  
36 scheduled to occur during that seven-day period. The trustee shall  
37 maintain records of each postponement and the reason therefor.

38 (e) Notwithstanding the time periods established under  
39 subdivision (d), if postponement of a sale is based on a stay  
40 imposed by Title 11 of the United States Code (bankruptcy), the

- 1 sale shall be conducted no sooner than the expiration of the stay
- 2 imposed by that title and the seven-day provision of subdivision
- 3 (d) shall not apply.

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